

Exhibit A

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1 you say it's a Packet Intelligence document, it's -- it
2 looks like it's -- unless it's Packet Intelligence
3 characterizing NetScout's products, then it's probably a
4 NetScout document.

5 Q All right. So let's assume, though, for the
6 sake of this question that the G10 probes can monitor
7 SS7 networks, okay?

8 A Okay.

9 Q Would that product, simply by monitoring an
10 SS7 network, infringe any of the asserted claims?

11 MR. GASSER: Objection, form.

12 A When you say "that product," are you referring
13 to one of the accused products or some other product?

14 Q The accused products. If an accused G10 was
15 purchased by British Telecom and put into an SS7 legacy
16 network to monitor SS7 communications, would that G10
17 infringe any of the asserted claims?

18 MR. GASSER: Objection, form.

19 A So if that product had the functionality that
20 I've identified in the report, as -- as part of what
21 it's doing for classification, either NAVL or any of the
22 other functionality I've pointed to or is typified
23 within the FSB, then it would.

24 Q Okay. But would the customer, in this case
25 British Telecom, for example, infringe any of the method

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1 claims by using that device in an SS7 network?

2 MR. GASSER: Objection, form.

3 A If in using that device they were executing
4 the code that I had identified for the flow state block,
5 which I would presume they were if they were using one
6 of these products with the version that's been accused,
7 in executing the code that I've identified and it's
8 doing the kinds of classification of flows and then
9 associating them in the way that it's consistent with
10 the Court's construction and providing the analytics
11 that are described, then they would be.

12 And, presumably, if you have one of those
13 products and it's monitoring SS7 communication, in
14 particular the data portion of an ISDN channel, I
15 believe it would.

16 Q And would there be deep packet inspection with
17 respect to an SS7 packet?

18 MR. GASSER: Objection, form.

19 A That question doesn't really make sense.

20 Q Why?

21 A Well --

22 MR. GASSER: Same objection.

23 A -- you're not really saying what you mean by
24 deep packet classification. You're asking with respect
25 to a single packet. It's more of the context of

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1 mean, based on what's described in the report, I believe
2 it does. So, I mean, I'm looking at paragraph 128.

3 Q Paragraph 128 describes the flow state block,
4 correct?

5 A It does.

6 Q So it's a memory for storing a database?

7 A That's correct.

8 Q Comprising none or more flow entries. That's
9 what you say here?

10 A That's the language of the claim.

11 Q Okay. So what's a flow entry?

12 A A flow entry is -- I mean, it could be a
13 5-tuple, for example. It's an entry representing a
14 connection.

15 Q Okay. And this FSB would store many of these
16 connection information pieces --

17 MR. GASSER: Objection, form.

18 Q -- is that correct?

19 A Typically it would.

20 Q Okay. Does that alone meet the conversational
21 flow limitation of the claims --

22 MR. GASSER: Objection, form.

23 Q -- being the flow state block?

24 MR. GASSER: Objection, form.

25 A When you say the conversational flow

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1 requirement of the claims, I'm not sure what you're
2 talking about.

3 Q Well, all the claims require the ability to
4 identify conversational flows, correct?

5 MR. GASSER: Objection, form.

6 A I -- I don't recall that language being in the
7 claims.

8 Q Well, all the claims have some reference to
9 conversational flows, correct?

10 A They do.

11 Q So would the FSB alone, simply storing
12 connection flows, create conversational flows?

13 MR. GASSER: Objection, form.

14 Q In your opinion.

15 MR. GASSER: Same objection.

16 A It's a little hard to answer that question.
17 It's -- it's kind of cutting the functionality of the
18 accused system into parts and trying to ignore other
19 parts.

20 If -- if the FSB just stored connections
21 and there was no other kind of analysis so that you
22 could associate connections as flow entries and
23 interrelate those flow entries into conversational flows
24 according to the claims -- the Court's claim
25 construction, I mean, essentially you're suggesting a

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1 hypothetical system with no conversational flows, in
2 that instance I don't think there'd be infringement.

3 MR. WOFSY: All right. Why don't we take
4 a break for lunch.

5 MR. GASSER: Sure.

6 VIDEOGRAPHER: We're off the record. The
7 time is 12:30 p.m.

8 (A lunch break was taken from 12:30 p.m. to 1:26 p.m.)

9 VIDEOGRAPHER: We're on the record. The
10 time is 1:26 p.m.

11 Q Welcome back to the second half of our day.
12 Dr. Almeroth, before we left for our lunch break we were
13 talking about the FSB, the flow state block. Do you
14 recall?

15 A I do.

16 Q So, just in general, what does the flow state
17 block do in the accused product?

18 MR. GASSER: Object to form.

19 A I mean, this is paragraph 128 where we talked
20 about -- I'd say in general it's an in memory storage --
21 in memory representation for storing a database
22 comprising the flow entries for the previously
23 encountered conversational flows.

24 Q So it's your opinion that it stores
25 conversational flows; is that correct?

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1 MR. GASSER: Objection, form.

2 A Not specifically. It's storing the flow
3 entries, which I think is required by the claims, and
4 those flow entries are associated with previously
5 encountered conversational flows, as we talked about
6 this morning.

7 Q So does the flow state block store information
8 about connection flows?

9 MR. GASSER: Objection, form.

10 A I believe it does have information about
11 connection flows.

12 Q And does it have information about
13 conversational flows?

14 MR. GASSER: Objection, form.

15 A It has information that can be correlated in a
16 way that associates flows together under the Court's
17 claim construction.

18 Q And what is that information?

19 A So I've described some of the examples in the
20 report of what some of the information is. I think it's
21 generally the information that's available and stored in
22 the flow state block. I don't have all of the fields
23 memorized, but based on storage and association of
24 information beyond the 5-tuple that's associated with
25 particular flows can then be used to correlate those

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1 flows in a way that meets the Court's claim construction
2 and produce analytics upon that based upon that
3 correlation.

4 Q What would you need to determine what was in a
5 flow record?

6 A A description of what the flow record is.

7 Q Have you reviewed any of those documents?

8 MR. GASSER: Objection, form.

9 A I believe I have.

10 (Exhibit No. 12 marked.)

11 Q I'm going to mark as Exhibit No. 12 a document
12 that bears Bates stamps 017741 through 01765 [sic], ask
13 if you can recognize that document?

14 A Okay.

15 Q Have you ever seen that document?

16 A I believe I have.

17 Q All right. Did you analyze this document in
18 connection with your analysis of the accused products?

19 A I believe I did.

20 Q And does this document provide information for
21 you to determine what information about a connection
22 flow is stored in a flow record?

23 A It does look to include that information.

24 Q Okay. Can you tell me what information in the
25 flow record is used to correlate two connection flows

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1 the media element or whether it was something separate,
2 whether it was taking advantage of the media attributes,
3 which I don't think are limited to just the media
4 element, which he also discussed in his deposition.

5 So I think, again, what I'm pointing to
6 are examples of where characteristics of media elements
7 and information contained or relatable from the FSB
8 allows you to associate flow -- flows for particular
9 applications.

10 Q Okay. So let's take away the future flow from
11 NAVL, let's take away this web page download and let's
12 strip away this media element aspect. Without those
13 three features, would the device having a flow state
14 block in it have any means of correlating two or more
15 connection flows contained in a flow state block?

16 MR. GASSER: Objection, form.

17 A I believe there would be. I mean, based on
18 the structures of what's in the FSB, and now we've
19 looked at the document that's Exhibit 12, it's more than
20 just a 5-tuple.

21 If you look at the analytics that are
22 generated that relate flows together and produce
23 information and statistics that require the relation of
24 flows to each other and then the examples that we've
25 since removed that demonstrate that the products were

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1 capable of that functionality and were performing that
2 functionality to produce some of the analytics would
3 demonstrate that that information and structure and
4 functionality was in place, even if I haven't analyzed
5 it for every single protocol or application or statistic
6 that can be generated by the system.

7 Q Well, have you analyzed it for any protocol
8 that could be analyzed by the system?

9 MR. GASSER: Objection, form.

10 A The ones that are all discussed in the report,
11 which you've removed -- you've essentially removed the
12 examples that I -- that I've included from the report
13 from consideration in -- in answering that question,
14 which --

15 Q Okay. So how does the core traffic
16 characterization solution correlate two or more
17 connection flows contained in the FSB in the absence of
18 any of the three features that I've removed, in your
19 opinion?

20 A It works in the same way. It uses information
21 from the FSB or that can be correlated with the FSB to
22 generate analytics and statistics that are part of the
23 core functionality. I mean, the ones that I focused on
24 are, you know, whether they're optional or not,
25 demonstrate particular ways that you can get from

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1 individual flows into a correlation of flows that meets
2 the Court's claim construction to produce statistics
3 that would be useful and/or advertised as part of what
4 the accused products can produce.

5 Q What is it about statistics that makes you
6 believe that there is a correlation between two or more
7 connection flows?

8 A Well, when you -- some of these examples are
9 included in the report, but when you can look at, for
10 example, the traffic consumed by watching a particular
11 application like Netflix, it's a combination of the RTSP
12 and the RTP traffic associated with that particular
13 application.

14 Similar for applications like Vonage and
15 voice over IP and the use of SIP in combination with RTP
16 channels. Those are applications that in order to
17 service a particular request or establish a service
18 require communication consisting of multiple protocols
19 that would be stored separately as part of the flow
20 state block as separate entries and then correlated
21 together based on the analysis that's specific to the
22 application or the protocols or the way that -- that
23 they interact.

24 Q And did you provide any of this information
25 that you just spoke about in your report?

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1 A Well, I provided the examples. I mean, I talk
2 about RTP, I talk about RTSP, particular applications
3 like Facetime and Vonage and T-Mobile. Some of the
4 examples I gave were potentially for optionals --
5 features, but it's that same kind of analysis that's --
6 that's described as part of the kinds of classification
7 that's core to the accused product.

8 Q Can you show me in your report where it is
9 that you provide your opinion that the core traffic
10 characterization solution can correlate two or more
11 connection flows to one another?

12 MR. GASSER: Objection, form.

13 MR. WOFSY: What's wrong with that
14 question?

15 MR. GASSER: Asked and answered.

16 MR. WOFSY: I have not asked that
17 question.

18 Q You can answer it.

19 A I think I've talked about the structure of the
20 report previously, how it talks about something of an
21 overview, what the infringing instrumentalities are, how
22 they work, sort of what happens from the time packets
23 arrive to how they're processed to how to go into the
24 FSB, some examples of applications.

25 I've done it in the context of particular

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1 patents and claims, and then there's the charts that
2 also work through I think that the language that says
3 this is the way that the system works and, for example,
4 you have applications that constitute these protocols
5 and work as follows is -- is exactly that description.

6 Q So in October when you and I are sitting in
7 Marshall, Texas in a courtroom and you're on the stand
8 and I'm talking to you while you're on the stand or one
9 of my colleagues is talking to you on the stand and you
10 will be speaking before a jury, and you're asked the
11 question "How does the core traffic characterization
12 solution operate to correlate two connection flows
13 stored in the FSB," what is your answer to the jury?

14 A So my answer will be to describe the process
15 of how the flow entries are first created, what some of
16 the information in the flow entries might be to describe
17 how those flow entries can ultimately be analyzed to
18 generate statistics that demonstrate that there's a
19 correlation between flows that takes place and then
20 identify examples of the way that it works for certain
21 applications and show that that functionality is
22 consistent across different protocols and different
23 applications in the accused products.

24 Q And when I ask you then like I asked you
25 earlier "Without the three optional features, how will

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1 the core traffic characterization solution correlate two
2 connection flows stored in the FSB," what will you tell
3 the jury?

4 MR. GASSER: Objection, form.

5 A Using the same techniques as the examples that
6 I've talked about, using the same type of information
7 that I've talked about generating the same classes of
8 analytics, the same outputs, the same structure of
9 information and that because there are so many different
10 protocols, each one will work in different ways.

11 But it's clear, based on the way
12 information is stored, what information is stored and
13 the kinds of results that are produced, that there is a
14 correlation of flows that meets the Court's claim
15 construction for these different instances of protocols
16 and applications.

17 Q So you mentioned that there are analytics that
18 produce these correlations and statistics, correct?

19 A Yes.

20 Q What are those analytics?

21 A So those are described in, for example,
22 paragraph 106 where it talks about some of the different
23 functionality and the different products. RTP is
24 mentioned there, some of the AAC and DPC functionality.
25 SIP is mentioned there. I mean, there's a whole host of

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1 documents that talk about the kinds of analytics and
2 results that can be produced in the accused products.

3 Q So in paragraph 107, right below the paragraph
4 106 that you just talked about, it says "NetScout also
5 requires that customers select, in conjunction with
6 their purchase of a GeoProbe solution, certain
7 usage-based options or bundles. See cites immediately
8 above."

9 So let's say I'm a poor customer and I
10 don't have a lot of money to spend on a G10 with all the
11 bells and whistles and all I want is the Chevrolet
12 version. I don't want the Cadillac or the Mercedes-Benz
13 version of a G10.

14 A Okay.

15 Q How is my Chevrolet version of a G10 without
16 any of these options; no heated seats, no heated
17 mirrors, nothing like that, how is that device going to
18 correlate two connection flows contained in the FSB?

19 MR. GASSER: Objection, form.

20 A Exactly the same way.

21 Q How?

22 A By using information that's stored in the FSB,
23 correlating those based on information that's specific
24 to the particular protocols and generating the analytics
25 that would report on those protocols.

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1 two different connection flows contained in the FSB,
2 what are you going to tell the jury?

3 MR. GASSER: Objection, form.

4 A Well, I would look at that document, ask you
5 to provide it and then go through and describe what's in
6 that document and provide the same kind of response as
7 to how the accused products work with respect to
8 receiving packets on the one end and producing results
9 on the other end.

10 Q What are those results?

11 A Those are the various analytics I've talked
12 about. I've included some specific examples and then
13 referenced documents and analysis tools that include
14 other examples.

15 Q And do these analytics require -- well, how
16 many servers and how many clients does it require,
17 client devices?

18 MR. GASSER: Objection, form.

19 A I don't understand the question.

20 Q Well, does it -- is it analytics with respect
21 to connection flows from a single server client pair?

22 MR. GASSER: Objection, form.

23 A In some instances I don't know that it's
24 limited to single client connection pairs. For example,
25 in the web page download time, a web page can be

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1 composed of multiple client server pairs as you've
2 described, and those would be related as well. So
3 there -- I mean, that's an example where it doesn't have
4 to be through the same number of client server pairs.

5 Q And where in the source code does it show how
6 that web page download time correlates those multiple
7 connection flows?

8 A Oh, I don't remember where in the source code
9 it is. I mean, I've -- they're principally relied-on
10 documents. I mean, I think that describes pretty
11 clearly how the functionality works.

12 Q Which documents are those?

13 A The ones I've cited to in my report.

14 Q And have you cited to any source code, though,
15 that implements what's discussed in those documents?

16 A Not that I recall. I think the report speaks
17 for itself. I think those documents are sufficient to
18 demonstrate how that functionality works and, based on
19 those documents and my understanding of how it worked,
20 it was sufficient to conclude that that was an example
21 of where individual flows had been associated with each
22 other under the requirements of the Court's claim
23 construction to meet the limitations of the claim.

24 Q So you've been talking a lot about flows.
25 What's a flow, in your view?

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1 MR. GASSER: Objection, form.

2 A Well, in the context of what I've looked at
3 here, it's principally a 5-tuple, and usually associated
4 with a flow in the 5-tuple is information about the
5 flow.

6 Q Let's turn to paragraph 74 of your report of
7 Exhibit No. 2.

8 A Okay.

9 Q It says under paragraph 74 "The Package
10 Intelligence Patents note that 'prior art packet
11 monitors classify packets into connection flows.'" Do
12 you see that?

13 A I do.

14 Q Earlier today I asked you about whether you
15 are aware of prior art packet monitors that classified
16 connection flows and you mentioned only something about
17 Wireshark, correct?

18 MR. GASSER: Objection, form.

19 A No.

20 Q Well, you said Wireshark was a packet . . .

21 A Capture.

22 Q Capture. So what are the prior art packet
23 monitors that are referred to here in these sort of
24 patents?

25 MR. GASSER: Objection, form.

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1 database comprises none or more flow entries. And that
2 statement is consistent with the Court's construction of
3 a flow-entry database, which is a database configured to
4 store entries where each entry describes a flow.

5 I mean, the Court's construction does not
6 say for flow-entry database that the database needs to
7 constore -- needs to store conversational flows. And,
8 in fact, I think that that was NetScout's proposed
9 construction to the Court, and the Court did not choose
10 that construction.

11 And so what we're left with is a set of
12 claims that require in some instances a flow-entry
13 database and require flow entries for previously
14 encountered conversational flows.

15 But the mechanism between the claim
16 language and what I'm describing here is specific to
17 particular claims about what that relationship is.

18 Q All right. Let's turn to claim 1C of the '789
19 patent.

20 A Okay.

21 Q It says "looking up a flow-entry database
22 comprising none or more flow-entries for previously
23 encountered conversational flows."

24 A I see that.

25 Q If there was a previously encountered

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1 conversational flow with more than one connection, how
2 would I look it up in the accused device?

3 MR. GASSER: Objection, form.

4 A How you look up what? What are you trying to
5 look up?

6 Q Well, would there -- how do -- how does the
7 accused device store flow entries for multiple
8 connection flows?

9 A I -- I think your question is misformed.

10 Q Does the accused device store flow entries for
11 multiple connection flows?

12 MR. GASSER: Objection, form.

13 Q In your opinion?

14 A You're using this term multi-connection flows.
15 I'm not sure what a multi-connection flow is. You
16 might -- you might mean a conversational flow or
17 multi-connection conversational flow?

18 Q Yes. Multi-connection conversational flow,
19 exactly.

20 A Okay. It would store those as flow entries,
21 as separate flow entries. And then through either the
22 information associated with the flow entry or based on
23 additional information that can be accessed based on
24 that flow entry, then it can correlate those flow
25 entries according to the requirements of the Court's

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1 claim construction.

2 Q All right. Can you show me in the source code
3 that you're referencing here with respect to element 1C
4 how the accused G10 performed step 1C?

5 MR. GASSER: Objection, form.

6 A So let me divide it into two parts. The first
7 part is looking up a flow entry in a database and using
8 some of at least the selected packet portions, and if
9 the packet portions are identified with a new flow
10 entry. Oh. Sorry. I was reading different parts of
11 different limitations by accident.

12 So "looking at the flow-entry database
13 comprising none or more flow-entries for previously
14 encountered conversational flows, the looking up using
15 at least some of the selected packet portions and
16 determining if the packet is of an existing flow."

17 So there's -- there's kind of the -- the
18 packet lookup process. There is the understanding that
19 within the flow-entry database are flows and then
20 there's the portion that those flows comprise -- or,
21 sorry, that the flow entries are for previously
22 encountered conversational flows.

23 If you want to walk through the code for
24 how you do the lookup of packets and packet information
25 with respect to the FSB, I think it's in the source

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1 code. We've talked about it.

2 I suspect you're more asking about how
3 that happens with respect to previously encountered
4 conversational flows that the flow entries that have
5 been previously encountered can be related to other
6 flows through the analytics process.

7 There -- there isn't a requirement, as I
8 see it in the claim, where the flow-entry database has
9 to include some sort of indication that a particular
10 flow entry is related to a conversational flow.

11 And, again, I think that's -- that's
12 essentially what NetScout proposed to the Court as the
13 correct construction and the Court said that doesn't
14 have to be in the flow-entry database. So most of what
15 C -- that you need to meet C is to show that you have a
16 flow-entry database, that you're able to look up entries
17 based on the packet portions, and then the relationship
18 to the conversational flow is to demonstrate that those
19 flow entries can be related to flow -- to conversational
20 flows. And I've done that based on the examples I've
21 described and the analytics that can be produced.

22 Q And those examples are the web page download
23 feature, the media flow feature and the future flow
24 feature, correct?

25 A Those were the examples I've talked about, how

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1 disjointed flows. But, again, it depends on in what
2 context and what kind of system. Are you talking about
3 a system that does monitoring, are you describing a
4 monitoring system that's keeping 5-tuples, how is it
5 working? It -- it depends.

6 I mean, different systems work in
7 different ways, and, ultimately, if you look at what
8 Dr. Waldbusser has pointed to, it's -- it's not keeping
9 disjointed flows, it's keeping essentially a single flow
10 and replacing port numbers.

11 And so it -- saying that they're
12 disjointed flows or that they're conversational flows,
13 it's almost like a hypothetical. This is really just a
14 -- an exchange of messages.

15 Q How does the invention of the asserted patents
16 monitor the disjointed flows of a Sun RPC exchange?

17 MR. GASSER: Objection, form.

18 A You asked how does the patent. I mean, there
19 might be an example within the specification for Sun RPC
20 that -- that describes an example. I'm not sure if it's
21 this same kind of communication exchange. We referenced
22 it a little bit in columns 30 through 34, but,
23 ultimately, with respect to how Sun RPC could be handled
24 by a system and still meet the requirements of the claim
25 is -- depends on the claim, depends on the system,

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1 depends on how it operates.

2 Q All right. Can you -- can you give me an
3 example whereby a Sun RPC that has disjointed connection
4 flows can be monitored by the device described in the
5 '789 patent?

6 MR. GASSER: Objection, form.

7 A I mean, it would depend. You're essentially
8 asking for me to design a system on the fly. I mean,
9 maybe as context we could use the accused products and
10 in the context of how it would analyze particular flows,
11 look at the ports, determine additional information
12 about what kinds of protocols or applications were being
13 used, and if there was some sort of analytics that
14 attempted to correlate the two different 5-tuples
15 together and characterize those as a conversational flow
16 according to the Court's claim construction, I mean,
17 that could be an example.

18 Q So it would require some kind of analytic to
19 do it?

20 MR. GASSER: Objection, form.

21 A Not necessarily. I was giving you one
22 example. My example wasn't intended to be the
23 definitive list of requirements that would have to be
24 met in order for the limitations to be met.

25 Q But you do agree that a Sun RPC exchange with

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1 two disjointed flows, each of those flows has a separate
2 5-tuple? Is that your understanding?

3 A Maybe. It depends on -- on whether you're
4 talking about an analysis of the protocol and the
5 context of a particular system. You could have a system
6 that creates separate 5-tuples, you could have a system
7 that creates one 5-tuple and simply replaces the port
8 number and maintains, essentially, a single flow.

9 That -- that second example is more
10 consistent with the systems Dr. Waldbusser had pointed
11 to in his invalidity allegations, and I think that for
12 the reasons I've identified in that -- in my report,
13 that that would meet limitations of the claims.

14 Q How does the example in the patent address an
15 RPC, the example that's in columns 30 through 34 of the
16 '789?

17 A I'd have to go through and look at it to see
18 what it's saying. I mean, it's got one --
19 two-and-a-half pages of details about how it works.
20 I -- I haven't -- I haven't memorized the details sort
21 of well enough to -- to tell you off the top of my head.

22 Q All right. How about looking at Figure 2?
23 Does that help?

24 A No.

25 Q The patent says at column 32, line 38 that

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PACKET INTELLIGENCE LLC,
Plaintiff,

VS .

NETSCOUT SYSTEMS, INC.,
TEKTRONIX COMMUNICATIONS,
TEKTRONIX TEXAS, LLC,
Defendant.

) Case No. 2:16-cv-230-JRG

REPORTER'S CERTIFICATE
ATTORNEYS' EYES ONLY
ORAL VIDEOTAPED DEPOSITION OF KEVIN ALMEROTH
JULY 13, 2017

I, Christy Fagan, CSR, CRR, RMR, TMR, RPR, CLR,
Certified Shorthand Reporter in and for the State of
Texas, hereby certify to the following:

That the witness, KEVIN ALMEROTH, was duly sworn
and that the transcript of the deposition is a true
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I further certify that pursuant to FRCP Rule 30(f)(1) that the signature of the deponent:

_____ was requested by the deponent or a party before the completion of the deposition and is to be returned within 30 days from date of receipt of the transcript. If returned, the attached Changes and Signature Pages contain any changes and the reasons therefor;

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1 _____ was not requested by the deponent or a party
2 before the completion of the deposition.

3 That pursuant to information given to the
4 deposition officer at the time said testimony was taken,
5 the following includes all parties of record and the
6 amount of time used by each party at the time of the
7 deposition:

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July 13, 2017

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1 That \$_____ is the deposition officer's charges
2 to the Defendant for preparing the original deposition
3 and any copies of exhibits.

4 I further certify that I am neither counsel for,
5 related to, nor employed by any of the parties in the
6 action in which this proceeding was taken, and further
7 that I am not financially or otherwise interested in the
8 outcome of this action.

9 Certified to by me on this _____ day of

10 _____, _____.

11 
12
13
14

15 _____
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